

**Town of Fishkill
Zoning Board of Appeals
May 16, 2006
Minutes**

Members Present

Barry Silverstein-Chairman
Maureen Kangas-Vice Chairman
Ronald Critelli
Lynne Raver
April Callahan-Alternate

Members Absent

MaryAnn Leenig
Marc Breimer-Alternate

Other Officials Present

Janis Gomez Anderson, Esq. – ZBA Attorney
Joel Petrus – Deputy Building Inspector

Notice of Appeal Hearing has been published in the Poughkeepsie Journal, The Southern Dutchess News and The Beacon Free Press.

Notified of the variance requests were the Town Board, Town Planning Board, Dutchess County Department of Planning, The Interim Zoning Administrator and the surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:05pm by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures. The Chairman read the procedures for the process of the Zoning Board of Appeals meetings.

Chairman Silverstein called for comments or corrections to the minutes of the April 2006 meeting. Hearing none, he called for a motion to accept the minutes as written.

Maureen Kangas made the motion to accept the minutes as written from the April 18, 2006 meeting.

Lynne Raver seconded.

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

April Callahan – Aye

Chairman Silverstein read a communication from Pam Garnot advising the ZBA that her Father-In-Law passed away. Per the terms of the variance granting the temporary carport, it was removed after his death.

Chairman Silverstein announced that Alternate Member April Callahan was on the Board for this meeting with full voting rights.

Vote:

ZB05-010 David Gianna, Melzingah Dam Rd

Maureen Kangas made the motion to Grant the variance request

Ronald Critelli seconded

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

April Callahan – Aye

Janis Anderson advised that for the record, the grid number on the record of findings is the new grid since the two lots were merged. The original application had one of the original grid numbers on it.

New Business

Appeal Number 1

Grid Number: 6156-03-165377 Address: 299 Baxtertown Rd

Application Number ZB06-005, submitted by John and Susan Attebery, requesting a 15ft variance to construct an addition, creating a 10ft side yard setback where 25ft is the minimum in an R-40 Zoning District. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:

DC Department of Planning citing this as a matter of local concern

DC Department of Public Works has no comment on this project

Town of Fishkill Planning Board offered a favorable recommendation. They specified two concerns. They requested a review prior to any decision by the Board. The first regarded the lot coverage maximum of 12%. The lot appears to be a pre-existing non-conforming lot of .31 acres. What is the current actual coverage? The second regarded the expansion of a non-conforming lot maximum at 25%. It was suggested that the applicant confirm the effect upon the original structure. The application may have to be amended to include variances for either of these concerns.

A petition signed by five neighbors showing no objection to the project.

Chairman Silverstein asked the applicants if they were advised of the Planning Board's concerns. Susan Attebery stated that they were contacted regarding the lot coverage and did the calculations for it.

John and Susan Attebery presented to the Board. Mrs. Attebery stated that the house has a small family room. They have two children and they don't have much room to spread out. When the kids have friends over, she and her husband have to go into the kitchen or bedroom. They would like to add one room to give them a family room and a game room. Mrs. Attebery advised the Board that the house does not have a basement.

Maureen Kangas asked if the family room was also the living room. Mr. Attebery confirmed that it was.

Chairman Silverstein asked what the square footage was. Mrs. Attebery advised that her husband calculated that with the house and shed, and the addition, it was 1,400 sq ft, which is 10.6%. Chairman Silverstein asked what the maximum allowed was. Janis Anderson advised that it was 12%.

Mrs. Attebery advised that the other half of the addition would be for a mechanical room. The area they live in has a high water table and there is a crawl space under the house. They have a sub-pump but when it rains or the snow melts, the water builds up in the area. They would like to bring the mechanicals above ground to protect them.

The Chairman asked for verification of their term "mechanicals". Mrs. Attebery advised that it would be their furnace and water heater.

Chairman Silverstein called for questions from the Board.

Janis Anderson asked what the current square footage of the house was. Mrs. Attebery stated that it was approximately 1,600 sq ft. Ms. Anderson asked the size of the addition. Mr. Attebery stated that it is 18' x 18'. He stated that there would also be a deck. He advised that they brought their full plans.

Maureen Kangas asked if the addition would be on the back of the house. Mr. Attebery stated that it would.

Mrs. Attebery advised the Board that the aerial view shows the side of the house in question. There are two long driveways and the neighboring houses are set further back in the woods. The neighbors in those houses have no problems with the project.

Maureen Kangas asked what was located directly behind their property. Mrs. Attebery advised that directly behind them is woods and their neighbors are set further back.

Mrs. Attebery advised the Board that they have lived in the house for 18 years and that they do not want to relocate.

Maureen Kangas asked how many bathrooms are in the house. Mrs. Attebery stated that there are two. Ms. Kangas asked for verification that another bathroom was not part of the plan. Mr. Attebery stated that it was not. It was only for the room.

Mrs. Attebery advised the Board that their son plays the drums and his set is also in the family room. Ms. Kangas asked how the neighbors feel about his drum. Mrs. Attebery stated that nobody has complained. They do keep the windows closed when he practices.

Janis Anderson stated that she is going to review the code section cited and the maps prior to the next meeting.

Susan Attebery asked the Board to explain the comments made by the Planning Board regarding their application. Chairman Silverstein stated that the Zoning Code states that there can only be a certain coverage on a lot. If you exceed the lot coverage, the application will need to be amended to include the excess amount.

Janis Anderson advised that the second comment is in regards to the change to the size of the non-conforming lot. She commented that she needs to research this. Ms. Anderson asked Deputy Inspector, Joel Petrus if he had a copy of the codebook. Mr. Petrus stated that it is on his computer. Nancy Lecker presented Ms. Anderson with a copy. Chairman Silverstein stated to Mrs. Attebery that the expansion of a pre-existing non-conforming site is restricted to a maximum of 25%. Ms. Anderson asked the Chairman to repeat the Code section cited. Chairman Silverstein stated that it was 150-14 F(1). Ms. Anderson stated that the wrong section was cited. This section is for the expansion of an existing non-conforming use. This is not a use issue and what needs to be resolved is if there is a section regarding the expansion of a non-conforming building. She will research it.

Ron Critelli asked for verification that the square footage given was for both floors. He asked Mr. Attebery to verify the length and width of the house. Mr. Critelli also questioned whether a variance was needed for the other side of the house. The plan states that it is only 14ft. Mrs. Attebery stated that they already have a variance for that side of the house and they are not building past that point of the house.

Mr. Critelli stated that the ZBA has had this in the past and he is certain that a variance will be needed for it. Chairman Silverstein stated that apparently (the Building Inspector) did not believe one was needed.

Ms. Anderson agreed that the ZBA has had this issue in the past. She asked Nancy Lecker if she could recall the names of the applicants. Ms. Anderson advised the Board that she and Ms. Lecker will research the prior cases.

Ms. Anderson read Town Code 150-17, which states no permit shall be issued nor shall any changes be made that will result in the increase of any such nonconformity. Ms. Anderson stated that she will research to see how this was interpreted in the prior cases.

Mr. Attebery advised the Board that the house is approximately 34' x 35.6'.

Ms. Anderson requested the details of the original variance request. Mrs. Attebery pointed out on the plans the original house. She advised that they constructed a two-story addition onto the house, which they received a variance for. She advised that a deck was being placed onto the new addition and if it needs to be moved in, it can be. Ronald Critelli stated that it would not make a difference. His interpretation is that it is a new piece and it is non-conforming.

Ms. Anderson stated that the prior variances were different. Ms. Lecker stated that one of the prior ones was for a porch. It was originally 6' x 4' and they wanted a 6' x 10'. Ms. Anderson stated that the issue is whether there is a variance that runs with the land. She will check to see if the ZBA limits the variance to the structure. Ms. Anderson advised the Applicants that they will receive a call from Nancy Lecker advising whether the application needs to be amended to include the second variance.

The Chairman called for additional questions.

Mrs. Attebery asked if Mr. Critelli received the figures that he was looking for. Mr. Critelli advised that he did. She also asked what the procedure was if they had to amend their application. Chairman Silverstein stated that they would receive a call from Nancy Lecker. Ms. Anderson stated that it would be as simple as writing a letter since they were not changing their plans. Ms. Anderson advised the Board that she will also address these issues in the Record of Findings.

Mrs. Attebery asked if they needed to attend the next meeting. The Chairman asked if the meeting should be adjourned since there may be an amendment. Ms. Anderson advised that it should be adjourned. She stated that she will prepare a Record of Findings for the next meeting so that the Hearing can be closed and voted on at the next meeting. The Chairman advised the Applicants to be at the next meeting.

The Chairman called for a motion to Adjourn this Public Hearing
April Callahan made the motion to Adjourn the Public Hearing
Maureen Kangas seconded
Motion Carried

Barry Silverstein – Aye
Maureen Kangas – Aye
Ronald Critelli – Aye
Lynne Raver – Aye
April Callahan – Aye

Appeal Number 2

Grid: 5953-07-711848

Address: 21 Victoria Lane

Application Number ZB06-006, submitted by Rick & Donna Wasylchak, requesting a 45.80ft variance, creating a 4.5ft rear yard setback where 50ft is the minimum and a 21ft variance, creating a 19ft side yard setback where 40ft is the minimum in an R2A Zoning District. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:
DC Department of Planning citing this as a matter of local concern
Catherine Eisler, Victoria Lane, has no objection to the project
Matthew King, Victoria Lane, has no objection

Rick & Donna Wasylchak presented to the Board. Mr. Wasylchak informed the Board that their proposal was for a family room. Their home is an 1,100 sq ft two-story home. Their living room is approximately 8' x 10'. He stated that he understood when they purchased the home that there may be an issue because they are zoned R-2A, but their property size is only .08 acres. Their setbacks are larger than their property.

Mr. Wasylchak advised that the home was originally built as a summer cottage. The State of New York property is less than a foot from the rear of the house. They have no rear setback. Their architect compared different Zoning Districts and for the size of their lot in an R-15 Zone, a variance would not be needed. In an R-20 Zone, they would only need a 1-foot variance. The variances sound big but they don't have the square footage required.

He stated that they have two children living at home and two older children. During the holidays, it gets very tight. They are only looking to add one room. They are the last house on a dirt road. They are not close to the main road.

Mrs. Wasylchak stated that she is the youngest of eight children. Two sisters live by them and also have children. Mrs. Wasylchak watches their children. Mr. Wasylchak commented that only four can sit a watch television at one time. Others must stand.

Janis Anderson asked what the state property was. Mr. Wasylchak stated that it is part of the Hudson Highland State Park system.

Chairman Silverstein showed the Board a picture of the property and house from the Assessor's file. Maureen Kangas and Ronald Critelli asked for verification where the addition will be placed. Mrs. Wasylchak pointed out the location on the photo. They also pointed it out on the plot plan. Mr. Wasylchak advised the Board that the addition would be constructed within the existing roofline. Ronald Critelli stated that the variance requests are more of a technicality. Chairman Silverstein agreed. In other Zoning Districts, it would not be an issue.

Mr. Critelli asked what the 19ft yard was. Mr. Wasylchak stated that his property is only 39ft wide. He won't meet the setbacks in any direction. Mr. Critelli asked if it was an older house. Mr. Wasylchak confirmed that it was. Janis Anderson reiterated that it was originally a cottage. Maureen Kangas commented that they renovated it. Mr. Critelli confirmed that it was built pre-zoning. Janis Anderson commented that at some point the Town rezoned it as two-acres lots.

Mr. Critelli pointed out a neighboring property and asked what was there. Mr. Wasylchak stated that the property belonged to Cathy Eisler, the one who wrote the letter with no objection.

Janis Anderson asked if there was a buffer between the two properties. Mrs. Wasylchak stated that there was a fence. Ms. Anderson asked if there would be windows on the side facing the neighbors. Mr. Wasylchak stated that there are no windows except for an attic window, mostly for light.

Chairman Silverstein called for additional questions. Ronald Critelli asked for verification that the room would be 23'x 20'. Mr. Wasylchak confirmed that is was.

Chairman Silverstein called for additional questions. Hearing none, he called for a motion to close this Public Hearing.

Maureen Kangas made the motion to Close the Public Hearing

Lynne Raver seconded

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

April Callahan – Aye

The Chairman called for any additional new business. Hearing none, he continued with the deliberations for the appeals heard at this meeting.

Deliberations

ZB06-005, Attebery, Baxtertoun Rd

Chairman Silverstein stated that if they meet the requirements for the square footage, even if they are a little outside of it, he doesn't have a problem with it. Maureen Kangas agreed with him.

ZB06-006, Wasylchak, Victoria Lane

Lynne Raver asked what the neighborhood was like. Maureen Kangas stated that it was a dirt road and they are at the end of it. Ms. Raver remembered and commented that there is nothing else around them. Chairman Silverstein commented that the state park was in the back. Ms. Kangas commented that they have family living around them. April Callahan asked if these lots were two acres. Nancy Lecker advised that they were not. They are all pre-zoning. Lynne Raver commented that this one was simple.

Chairman Silverstein called for any additional comments. He made a comment to the Floor that the appeals are voted on at the next meeting. Each (ZBA) Member may sound positive at this meeting and be negative at the next meeting, or may be negative today and positive next month. An applicant may get a good feeling one way or another, but it doesn't mean that it is the way it is going to go.

Chairman Silverstein called for a motion to Adjourn the ZBA Meeting.

Maureen Kangas made the motion to Adjourn the ZBA Meeting

Ronald Critelli seconded

Motion Carried

Meeting Adjourned at 7:43pm

Respectfully submitted

Nancy Fitzgerald-Lecker

ZBA Clerk